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09/826,428	04/02/2001	Ronald Jacobson	1.002.00	3631

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MALLOY & MALLOY, P.A.
2800 S.W. Third Avenue
Historic Coral Way
Miami, FL 33129

EXAMINER

MEINECKE DIAZ, SUSANNA M

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 09/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/826,428

Applicant(s)

JACOBSON, RONALD

Examiner

Susanna M. Diaz

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-4,8,9,12-17,21,22,24-27,30-32,34,35,37-39 and 42-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-4,8,9,12-17,21,22,24-27,30-32,34,35,37-39 and 42-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. This Non-Final Office action is responsive to Applicant's amendment filed May 29, 2003.

Claims 1, 5-7, 10, 11, 18-20, 23, 28, 29, 33, 36, 40, and 41 have been cancelled.

Claims 49-54 have been added.

Claims 2-4, 8, 9, 12-17, 21, 22, 24-27, 30-32, 34, 35, 37-39, and 42-54 are presented for examination.

2. The previously pending objection to the drawings is withdrawn in response to Applicant's amendment of the specification.

The previously pending claim objection is withdrawn in response to Applicant's claim amendment.

The previously pending rejections under 35 U.S.C. § 112, 2nd paragraph are withdrawn in response to Applicant's amendment of the claims.

Response to Arguments

3. Applicant's arguments, see paper no. 9, filed May 29, 2003, with respect to the art rejection of claims 1-48 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, new grounds of rejection are made in view of new prior art and Applicant's addition of new claims.

Claim Objections

4. Claims 49, 53, and 54 are objected to because of the following informalities:

Claim 49, line 3, insert --assembly-- after "processor" to provide proper antecedent basis.

Claim 49, line 26, delete "responses", insert --response--

Claim 53, line 8, delete "defining", insert --define--

Claim 54, line 2, delete "resulting", insert --result--

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 46 and 47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 46 is dependent from cancelled claim 40. Claim 47 is dependent from claim 46 and therefore ultimately depends from cancelled claim 40 as well. For examination purposes, it will be assumed that claim 46 is dependent from claim 53 instead of claim 40.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 37-39, 42-48, 53, and 54 are rejected under 35 U.S.C. 102(b) as being anticipated by Heagle et al. (U.S. Patent No. 5,900,801).

Heagle discloses a process for monitoring operation of a food service site, said process comprising:

[Claim 53] a) establishing a plurality of operational categories associated with the functioning of the site (col. 6, lines 45-55);

b) providing a user with a plurality of interactive test items determinative of a degree of performance of the plurality of operational categories (col. 7, lines 1-35);

c) acknowledging a plurality of standards which define acceptable performance parameters for the operational categories (col. 8, lines 15-19, 36-49);

d) providing the user with a plurality of user responses indicative of a plurality of possible existing conditions of the plurality of operational categories (col. 7, lines 1-35; col. 8, lines 3-19); and

e) requiring the user to select a user response indicative of an existing condition of a corresponding one of the plurality of operational categories currently being monitored (col. 7, lines 1-35; col. 8, lines 36-49);

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[Claim 54] collecting resulting records of data derived from the selected user responses which are indicative of compliance with the predetermined standards (col. 8, lines 3-67);

[Claim 48] processing the result records to establish documentary evidence of a pattern of compliance with said plurality of standards (col. 8, lines 3-67);

[Claim 37] communicating a plurality of corrective actions to the user in response to entry of user responses indicative of existing conditions being non-compliant with the plurality of standards (col. 7, lines 1-35; col. 8, lines 3-67);

[Claim 38] requesting performance of the corrective actions by the user in an attempt to bring existing conditions of the operational categories into compliance with the plurality of standards (col. 7, lines 1-35; col. 8, lines 3-67);

[Claim 39] requiring supplemental user response subsequent to performance of the corrective actions which are indicative of compliance of the existing conditions with the plurality of standards (col. 7, lines 1-35; col. 8, lines 3-67);

[Claim 42] manually selecting at least one of the provided plurality of user responses (col. 8, lines 40-44);

[Claim 43] automatically selecting at least one of the provided plurality of user responses (col. 8, lines 40-44);

[Claim 44] defining requested user responses as temperatures automatically determined by direct temperature sensing of food products (col. 7, lines 1-35; col. 8, lines 36-67);

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[Claim 45] automatically recording the user responses defined by the sensed temperatures (col. 7, lines 1-35; col. 8, lines 36-67);

[Claim 46] scheduling periodic performance of the plurality of interactive test items and required user responses (col. 7, lines 50-58);

[Claim 47] determining untimely entry of user responses to scheduled interactive test items being indicative of untimely user performance of scheduled test items (col. 7, lines 50-58; col. 8, lines 36-67; col. 10, lines 4-12; col. 14, lines 37-46; col. 15, lines 22-30, 43-47).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2-4, 8, 9, 12-17, 21, 22, 24-27, 30-32, 34, 35, and 49-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heagle et al. (U.S. Patent No. 5,900,801).

Heagle discloses a system for monitoring a food service site, said system comprising:

[Claim 49] a) a processor operable at the site and comprising memory, a display and input facilities (Figs. 4-7; col. 7, lines 1-49; col. 8, lines 3-67);

b) said processor assembly including a monitoring program determinative of compliant operational performance of the site (col. 7, lines 1-35; col. 8, lines 36-49);

c) said monitoring program comprising a task application relating to a plurality of different operational categories (col. 6, lines 45-55; col. 7, lines 1-35; col. 8, lines 36-49);

d) said task application including a plurality of user interactive test items communicated to a user on said display (col. 7, lines 1-35; col. 8, lines 3-19, 36-49);

e) a plurality of predetermined standards defining acceptable performance parameters for each of said operational categories (col. 8, lines 15-19, 36-49);

f) said monitoring program further comprising a corrective application comprising a plurality of corrective actions evident on said display, each of said corrective actions being responsive to a user response which is noncompliant with associated ones of said plurality of predetermined standards (col. 7, lines 1-35; col. 8, lines 3-19);

g) at least some of said corrective actions requiring a supplemental user response available to the user on said display (col. 7, lines 1-35; col. 8, lines 3-67); and

h) said supplemental user responses determinative of compliance of said operational categories with associated ones of said predetermined standards (col. 7, lines 1-35; col. 8, lines 3-67);

[Claim 50] further comprising a temperature acquisition module interfaced with said processor assembly, said temperature acquisition module comprising a temperature sensing probe structured for direct measurement of food products for determining existing temperatures thereof (col. 7, lines 1-66; col. 8, lines 3-49);

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[Claim 51] wherein said input facilities include said temperature acquisition module, said temperature sensing probe further structured for direct contact with the food products and communication of said existing temperatures to said display (col. 7, lines 1-66; col. 8, lines 3-49);

[Claim 52] wherein said temperature acquisition module is cooperatively structured with said processor assembly to be determinative of the existing temperatures being within acceptable performance parameters; said acceptable performance parameters including a temperature range of each of the food products at least partially defined by a predetermined low temperature and a predetermined high temperature (col. 7, lines 1-66; col. 8, lines 3-49 -- A range of temperatures is understood to be implicit to meeting regulatory temperature guidelines and requirements in the food industry);

[Claim 2] wherein said predetermined standards comprise government regulatory requirements (col. 6, lines 45-55; col. 8, lines 3-67);

[Claim 8] wherein each of said interactive test items are communicated to the user on said display concurrently with at least one related user response (col. 7, lines 1-35; col. 8, lines 3-67);

[Claim 9] wherein said input facilities are structured to provide user selection of at least said one related user response (col. 7, lines 1-35; col. 8, lines 3-67);

[Claim 12] wherein each of said interactive test items are communicated to the user on said display concurrently with a plurality of related user responses (col. 7, lines 1-35; col. 8, lines 3-67);

[Claim 13] wherein said input facilities are further structured to provide user selection of an appropriate one of said plurality of user responses indicative of actual operating conditions (col. 7, lines 1-35; col. 8, lines 3-67);

[Claim 14] wherein said input facilities comprise a display activated keypad structured to allow manual user selection of an appropriate one of said user responses (Figs. 4, 5, 7; col. 7, lines 1-6);

[Claim 15] wherein said monitoring program includes a scheduling application including performance of said plurality of interactive test items at a specified time (col. 7, lines 50-58);

[Claim 16] wherein said scheduling application indicates performance of said plurality of interactive test items in a predetermined sequence (col. 7, lines 50-58; col. 8, lines 36-67; col. 10, lines 4-12; col. 14, lines 37-46; col. 15, lines 22-30, 43-47 -- An employee is guided step-by-step through proper responses to an event and a history of events, including employee response to alarms, is logged, thereby implying that the performance of interactive test items is performed in a predetermined sequence);

[Claim 17] wherein said monitoring program further comprises an alert application for communicating untimely input of a corresponding user response to a scheduled interactive test item (col. 7, lines 50-58; col. 8, lines 36-67; col. 10, lines 4-12; col. 14, lines 37-46; col. 15, lines 22-30, 43-47);

[Claim 21] wherein said input facilities comprise a display activated keypad structured to allow user selection of an appropriate one of a plurality of displayed user responses (Figs. 4, 5, 7; col. 7, lines 1-6);

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[Claim 22] wherein said input facilities comprise a display activated keypad structured to allow user selection of an appropriate one of said user responses displayed concurrently with a related one of said interactive test items (Figs. 4, 5, 7; col. 7, lines 1-6).

Regarding claims 49, 50, and 52, Heagle discloses a hand-held device used by an employee for entering data, such as temperature data collected through an attached thermometer, to be communicated to the CPU through a workstation monitor (WSM) (col. 7, lines 37-49, 66; col. 9, lines 27-28; col. 12, lines 33-41); however, much of the functionality recited in the claimed invention is carried out mainly by Heagle's workstation monitors and CPU. Unlike Heagle, the claimed invention performs most of its recited functionality through a portable processor. Accordingly, the Examiner cites MPEP § 2144.04(V)(A), which states, "Fact that a claimed device is portable or movable is not sufficient by itself to patentably distinguish over an otherwise old device unless there are new or unexpected results." See *In re Lindberg*, 194 F.2d 732, 93 USPQ 23 (CCPA 1952). In the present case, the Examiner further asserts that making an otherwise old device portable provides the benefits of convenience and cost efficiency. For example, instead of carrying around heavy equipment or implementing expensive monitoring equipment at various workstations throughout a work site, a portable device provides a user with the option of carrying around relatively light-weight data collection means to collect data from various workstations throughout a work site. As discussed above, Heagle does disclose a hand-held device used by an employee for entering

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data, such as temperature data collected through an attached thermometer, to be communicated to the CPU through a workstation monitor (WSM), thereby suggesting the option of utilizing portable processors for performing the disclosed functionality. Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to implement Heagle's monitoring, test items, temperature display, and corrective action components through a portable processor in order to provide Heagle's employees with the convenient and cost-effective option of carrying around a relatively light-weight data collection means to collect data from various workstations throughout a work site instead of having to carry around heavy equipment or implementing expensive monitoring equipment at the various workstations throughout the work site.

As per claims 3 and 4, Heagle allows restaurant operators to set predetermined operational temperature standards (which typically include an acceptable predetermined low and high temperature), such as those based on government regulatory standards (as discussed above); however, Heagle does not explicitly teach that said predetermined standards further comprise owner derived standards which exceed said government regulatory standards. Official Notice is taken that it is old and well-known in the art for a business manager to choose to set higher standards for his/her business than those required by government regulatory standards. As a matter of fact, many businesses tout these higher standards in advertisements as an added attraction to further encourage customers to patronize their respective business. Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the

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time of Applicant's invention to adapt Heagle to allow restaurant operators to set predetermined standards comprising owner derived temperature standards which exceed government regulatory standards and comprise a temperature range of the food product at least partially defined by a predetermined low temperature and a predetermined high temperature in order to provide a restaurant owner with more advertising leverage to encourage customers to patronize his/her restaurant.

Heagle discloses a system for monitoring a food service site, said system comprising:

[Claim 24] a) a processor operable at the site and comprising memory, a display and input facilities (Figs. 4-7; col. 7, lines 1-49; col. 8, lines 3-67);

b) said processor assembly including a monitoring program determinative of compliant operational performance of the site (col. 7, lines 1-35; col. 8, lines 36-49);

c) said monitoring program comprising a task application relating to a plurality of different operational categories (col. 6, lines 45-55; col. 7, lines 1-35; col. 8, lines 36-49);

d) said task application including a plurality of user interactive test items evident on said display and each requiring a user response indicative of actual conditions associated with said plurality of operational categories (col. 7, lines 1-35; col. 8, lines 3-19, 36-49);

e) a plurality of predetermined standards defining acceptable performance parameters for said operational categories (col. 8, lines 15-19, 36-49);

f) a corrective application comprising a plurality of corrective actions evident on said display, each of said corrective actions being responsive to a user response which is non-compliant with associated ones of said plurality of predetermined standards (col. 7, lines 1-35; col. 8, lines 3-49);

g) result records comprised of data derived from a collection of said user responses and indicative of compliance with said predetermined standards (col. 7, lines 1-35; col. 8, lines 36-49; col. 12, line 26 through col. 13, line 5);

h) a control facility including a central processor having sufficient capability to process said result records in a manner evidencing a pattern of compliance with said predetermined standards (col. 7, lines 1-35; col. 8, lines 36-49; col. 12, line 26 through col. 13, line 5);

[Claim 25] wherein said input facilities comprise a temperature acquisition module interfaced with said processor and structured to communicate data defining said user response and representative of actual conditions of a food product (col. 7, lines 1-35, 66; col. 8, lines 3-49);

[Claim 26] wherein said temperature acquisition module comprises a probe assembly including a temperature sensing probe operative by the user to directly measure existing temperature data of the food product, said temperature data automatically communicated to the user on said display and defining a corresponding user response (col. 7, lines 1-35, 66; col. 8, lines 3-49);

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[Claim 27] wherein said plurality of input facilities further comprise a display activated keypad structured to allow user selection of an appropriate one of a plurality of user responses evident on said display (Figs. 4, 5, 7; col. 7, lines 1-6);

[Claim 30] wherein said plurality of predetermined standards comprise government derived temperature standards (col. 6, lines 45-55; col. 8, lines 3-67);

[Claim 34] wherein said corrective application further comprises requirements for a supplementary user response indicative of compliance of actual conditions with related ones of said plurality of predetermined standards (col. 7, lines 1-35; col. 8, lines 3-67);

[Claim 35] wherein said monitoring program further comprises an alert application for communicating untimely user responses to said plurality of interactive test items (col. 7, lines 50-58; col. 8, lines 36-67; col. 10, lines 4-12; col. 14, lines 37-46; col. 15, lines 22-30, 43-47).

Regarding claims 24 and 25, Heagle discloses a hand-held device used by an employee for entering data, such as temperature data collected through an attached thermometer, to be communicated to the CPU through a workstation monitor (WSM) (col. 7, lines 37-49, 66; col. 9, lines 27-28; col. 12, lines 33-41); however, much of the functionality recited in the claimed invention is carried out mainly by Heagle's workstation monitors and CPU. Unlike Heagle, the claimed invention performs most of its recited functionality through a portable processor. Accordingly, the Examiner cites MPEP § 2144.04(V)(A), which states, "Fact that a claimed device is portable or movable is not sufficient by itself to patentably distinguish over an otherwise old device unless

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there are new or unexpected results.” See *In re Lindberg*, 194 F.2d 732, 93 USPQ 23 (CCPA 1952). In the present case, the Examiner further asserts that making an otherwise old device portable provides the benefits of convenience and cost efficiency. For example, instead of carrying around heavy equipment or implementing expensive monitoring equipment at various workstations throughout a work site, a portable device provides a user with the option of carrying around relatively light-weight data collection means to collect data from various workstations throughout a work site. As discussed above, Heagle does disclose a hand-held device used by an employee for entering data, such as temperature data collected through an attached thermometer, to be communicated to the CPU through a workstation monitor (WSM), thereby suggesting the option of utilizing portable processors for performing the disclosed functionality. Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant’s invention to implement Heagle’s monitoring, test items, and corrective action components through a portable processor in order to provide Heagle’s employees with the convenient and cost-effective option of carrying around a relatively light-weight data collection means to collect data from various workstations throughout a work site instead of having to carry around heavy equipment or implementing expensive monitoring equipment at the various workstations throughout the work site.

As per claims 31 and 32, Heagle allows restaurant operators to set predetermined operational temperature standards (which typically include an acceptable predetermined low and high temperature), such as those based on government

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regulatory standards (as discussed above); however, Heagle does not explicitly teach that said predetermined standards further comprise owner derived standards which exceed said government regulatory standards. Official Notice is taken that it is old and well-known in the art for a business manager to choose to set higher standards for his/her business than those required by government regulatory standards. As a matter of fact, many businesses tout these higher standards in advertisements as an added attraction to further encourage customers to patronize their respective business.

Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to adapt Heagle to allow restaurant operators to set predetermined standards comprising owner derived temperature standards which exceed government regulatory standards and comprise a temperature range of the food product at least partially defined by a predetermined low temperature and a predetermined high temperature in order to provide a restaurant owner with more advertising leverage to encourage customers to patronize his/her restaurant.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Heagle et al. (U.S. Patent No. 5,939,974) -- Discloses a system for monitoring food service requirements for compliance at a food service establishment.

Johnson et al. (U.S. Patent No. 6,553,336 B1) -- Discloses a remote alarm system with notification means.

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McMahon (U.S. Patent No. 5,956,658) -- Discloses a data collection device for collecting maintenance data from a field tour.

Shirata et al. (U.S. Patent No. 5,321,629) -- Discloses a facility inspection support apparatus.

Pellerin (U.S. Patent No. 6,411,916 B1) -- Discloses a food safety control method and apparatus.

Takeda et al. (U.S. Patent No. 6,577,969 B2) -- Discloses a food safety administration system that incorporates a handheld device for testing and recording results for HACCP monitoring.

Murphy et al. (U.S. Patent No. 6,390,822 B1) -- Discloses a job specific tutorial system.

McKee (US 2003/0158763 A1) -- Discloses a method and system for monitoring service quality in a restaurant.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (703) 305-1337. The examiner can normally be reached on Monday-Friday, 9 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703)308-1113.

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Any response to this action should be mailed to:

**Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450**

or faxed to:

(703)305-7687 [Official communications; including
After Final communications labeled
"Box AF"]

(703)746-7048 [Informal/Draft communications, labeled
"PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 22202, 7th floor receptionist.

Susanna Diaz

Susanna M. Diaz
Primary Examiner
Art Unit 3623
September 11, 2003